IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 173 of 2005

Between:

Ragiboyina Bhulakshmi W/o.China Koteswara Rao
R/o. Gollapuram village,

Nuzendla Mandal, Guntur Dist.

..... PETITIONER

AND

1 The District Panchayat Officer, Guntur Dist.
2 Yerragorla Sambaiah S/o.Yogaiah, Upa Sarpanch
R/o.Talarlapalli Village, Nuzendla Mandal,
Guntur Dist.

.RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in Roc.No.7766/2004 -04 dt 17-12-2004 as illegal, arbitrary and one without jurisdiction and pass such other or further orders .

Counsel for the Petitioner:MR.O.MANOHAR REDDY

Counsel for the Respondent No.1 : GP FOR PANCHAYAT RAJ & RURAL DEVELOPMENT.

Counsel for the Respondent No.2 : Mr.POLISETTI RADHA KRISHNA

The Court at the stage of admission made the following :

ORDER:

The present writ is filed questioning the order dated 17-12-2004 issued by the District Panchayat Officer, disqualifying the petitioner for the post of Sarpanch. The petitioner was elected as Sarpanch of Tarlapalli Gram Panchayat, Nuzendla mandal, Guntur district. One Moraboyina Subbulu filed a petition before the Election Tribunal cum Junior Civil Judge, Vinukonda on the ground that the petitioner has disqualified to contest the election as per section 19 (3) of the A.P.Panchayat Raj Act 1994 and the same was numbered as

E.O.P.7 of 2001. Earlier the petitioner filed W.P.24834 of 2001 challenging the validity of G.O.Ms.No.111 Panchayatraj and Rural Development Department dated 3-3-1995. The said writ petition was dismissed by order dated 2-4-2002. The petitioner carried the matter in appeal and the same was also dismissed. Pursuant to dismissal of the writ petition and writ appeal, the Election Tribunal proceeded with the matter and on consideration of the matter dismissed the petition by order dated 13-10-2004. Questioning the said order, the second respondent herein filed W.P. 23921 of 2004 and by order dated

9-7-2004, the matter was remanded back to Election Tribunal. Questioning the said order in W.P. 23921 of 2004, the petitioner herein filed an appeal in W.A.No.2193 of 2004. It is stated that while admitting the appeal, by order dated 30-12-2004 interim stay was granted.

While so, the impugned notice dated 17-12-2004 was issued disqualifying the petitioner to hold the post of Sarpanch. Questioning the said proceedings the petitioner filed the present writ petition on the ground that without issuing notice and without furnishing copy of the report submitted by the Revenue Divisional Officer, the

impugned order was passed, in violation of principles of natural justice and provision contained in A.P. Panchayat Raj Act.

The main contention of the petitioner in the present writ petition is that without following the procedure contemplated under section
22 (1) of the A.P.Panchayat Raj, i.e., without adjudication of the dispute as regards disqualification before the concerned District Court, the impugned order is passed and the same is illegal and arbitrary.

Learned counsel for petitioner submitted that without obtaining a declaration from the District Court, straight-away the impugned order was issued disqualifying the petitioner, without even recording reasons and furnishing the copy of the alleged report submitted by the Divisional Panchayat Officer. Learned counsel for petitioner placed reliance on a judgment of Division Bench of this Court in CHAVA ROSAIAH Vs. CHINTALA VENKATESWARLU, wherein this Court held that "*unless there is a decision on the allegations so made against the member or Sarpanch by and adjudicatory authority, which in this case is District judge, such allegations cannot be used against the member or Sarpanch and he would continue to hold the office of member or Sarpanch unless removed in accordance with law*."

Admittedly, in the present case, before passing the impugned order dated 17-12-2004 disqualifying the petitioner, the respondent authority has not referred the matter to the District Court for adjudication. Hence, following the judgment of the Division Bench in Chava Rosaiah's case (cited supra), the impugned order
dated 17-12-2004 is set aside and the writ petition is allowed. However, this order does not preclude the respondents to refer the matter to the competent District Court for obtaining a declaration and passing subsequent appropriate orders, in accordance with law.

Subject to above observations, the writ petition is allowed. No costs.

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N.V.RAMANA,J

27th Jan,2005

tvk

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The District Panchayat Officer Guntur Dist. Guntur
2 Yerragorla Sambaiah S/o.Yogaiah, Upa-sarpanch
R/o.Talarlapalli Village, Nuzendla Mandal,
Guntur Dist.

3.2CCs to Government Pleader for Panchayat Raj and Rural Development, High Court of A.P.Buildings, Hyderabad (OUT)

4.2CD copies

*Form-NIC-OGS/WP{**MVK**}*